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Turkey: Recent Developments in National and Public Security Law

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SUMMARY In March 2015, Turkey’s Parliament passed two major “package” laws, many of whose provisions tighten government control over national and public security in the country by amending a number of relevant laws. In particular, Law No. 6638 enhances police powers to conduct searches, use weapons, wiretap, detain individuals without a warrant, and remove demonstrators from scenes of protest. The Law also increases penalties for certain actions taken by demonstrators, provides for closer monitoring of car rental information by car rental companies, imposes more severe punishments for drug-related crimes, and authorizes governors to assume some of the same powers as prosecutors. In addition, Law No. 6638 provides for significant reform of Turkey’s gendarmerie, including the notable step of transferring its control from the Turkish Armed Forces to the Ministry of the Interior.

The other “package law,” Law No. 6639, amends the Law on Internet Media Regulation to extend government control over the Internet, giving the Prime Minister and other relevant ministers the power to immediately request the removal of Internet content and/or blocking of a website when a court order for such action has been delayed and a risk to public or national security exists. The Law also addresses other Internet-related matters, electronic communications, and the processing of personal data and privacy protection, and amends the relevant article on covert operations funding in the Public Finance Management and Control Law.

Critics of the recent tightening of national security laws have expressed concern, in particular about their impact on freedom of the press in Turkey, but also about the exercise of the rule of law in the country in general.

I. Introduction

On March 27, 2015, the Grand National Assembly, Turkey’s Parliament, passed two major “package” laws that have a major impact on national security and the maintenance of public order in the country. One of these laws is Law No. 6638, the Law on Amending the Police Powers and Duties Law, the Law on the Gendarmerie’s Organization, Duties and Authorities, and Some [Other] Laws.¹ Known as the “Domestic, or Homeland, Security Package” (İç Güvenlik paketi) and also referred to as the “Legal Package to Protect Freedoms,” the sixty-eight-article Law had first been introduced by the ruling Justice and Development Party in

¹ Polis Vazife ve Salâhiyet Kanunu, Jandarma Teşkilat, Görev ve Yetkileri Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına dair Kanun [Law on Amending the Police Powers and Duties Law, Law on the Gendarmerie’s Organization, Duties and Authorities, and Some [Other] Laws], Law No. 6638, available on the Grand National Assembly of the Republic of Turkey website, at <https://www.tbmm.gov.tr/kanunlar/k6638.html>, archived at <http://perma.cc/9NDU-HXY8>.

February 2015 and originally contained 132 articles.² The Law amends more than a dozen laws, with the longest sections being amendments to articles 21–33 of the Police Organization Law and articles 34–46 of the Police Higher Education Law.

Among the most controversial provisions of Law No. 6638 are those contained in the first twenty articles, which affect the Police Powers and Duties Law; the Law on the Gendarmerie's Organization, Duties, and Powers; the Law on Meetings and Demonstrations; the Anti-Terrorism Law; the Criminal Code; the Code of Criminal Procedure; the Provincial Administration Law; the Compensation for Terrorism Law; and the Identification Notification Law.³

The other package law, Law No. 6639, concerns, among other matters, the power to remove online content and issue Internet-blocking decisions, and the features of a discretionary fund used by the President of Turkey to finance covert operations.⁴

This report covers some of the key aspects of the two laws that some have argued may have an impact on the exercise and enjoyment of individual rights in particular. Most of the measures highlighted are found in Law No. 6638.

II. Background: Some Previous Measures Tightening Public and National Security

The changes to government national security powers have not been made in a vacuum. In April 2014, the Grand National Assembly adopted the Law Amending the Law on State Intelligence Services and the National Intelligence Organization.⁵ The amending Law greatly expanded the powers of the National Intelligence Agency (Millî İstihbarat Teşkilatı, MİT) by allowing MIT to access personal data without a court order and by granting MİT agents immunity from prosecution for violations of law they might commit in the course of their work. The Law also made it a crime to report on or acquire information about MİT and provided for a prison term of up to nine years for media workers convicted of publishing information leaked from intelligence sources.⁶ Although the opposition Republican People's Party indicated it would petition the

² Jessica Michek, *New Law Threatens Fundamental Freedoms in Turkey*, BIPARTISAN POLICY CENTER (Apr. 1, 2015), <http://bipartisanpolicy.org/blog/new-law-threatens-fundamental-freedoms-in-turkey>, archived at <http://perma.cc/8U82-4AFZ>.

³ Law No. 6638, arts. 1–20.

⁴ Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılması Hakkında Kanun [Law on Amendments to Some Laws and Decree Laws], Law No. 6639, Mar. 27, 2015, RESMÎ GAZETE [OFFICIAL GAZETTE], No. 29327, Apr. 15, 2015, <http://www.resmigazete.gov.tr/eskiler/2015/04/20150415-1.htm>, archived at <http://perma.cc/ML54-HQQX>.

⁵ Devlet İstihbarat Hizmetleri ve Millî İstihbarat Teşkilatı Kanununda Değişiklik Yapılmasına dair Kanun [Law Amending the Law on State Intelligence Services and the National Intelligence Organization], Law No. 6532, Apr. 17, 2014, in force on Apr. 26, 2014, RESMÎ GAZETE, No. 28983, June 26, 2014, <http://www.resmigazete.gov.tr/eskiler/2014/04/20140426-1.htm>, archived at <http://perma.cc/FM22-D87K>.

⁶ *Turkey*, in FREEDOM HOUSE, FREEDOM IN THE WORLD 2015, <https://freedomhouse.org/report/freedom-world/2015/turkey>, archived at <https://perma.cc/6A2R-DC3X>; *Turkey: Spy Agency Law Opens Door to Abuse*, HUMAN RIGHTS WATCH (Apr. 29, 2014), <https://www.hrw.org/news/2014/04/29/turkey-spy-agency-law-opens-door-abuse>, archived at <http://perma.cc/3XHF-528S>.

Constitutional Court to seek the annulment of Law No. 6532,⁷ thus far it seems no such case has come before the Court.

In February 2014, the Grand National Assembly strengthened the government's control over the Internet by adopting amendments to the country's Internet law, Law No. 5651. These amendments expanded the power of the Telecommunications Directorate (Telekomünikasyon İletişim Başkanlığı, TİB) "to order the blocking of websites, allowing it to do so based on vaguely defined grounds related to the right to privacy, without prior court approval, though a court had to uphold the order within 48 hours for a block to remain in place."⁸

The government has stated that the 2015 reforms make police powers more in conformity with those of European countries. However, this claim is disputed by rights groups. The reforms may also have been adopted in response to violence that had occurred a few months previously in the southeast part of the country, where the population is predominantly Kurdish. President Recep Tayyip Erdogan had stressed at the time that new security measures should be passed to prevent street violence of that sort from marring the June 12 elections. A related reason suggested for the adoption of the laws was the desire to appeal to nationalist voters, in advance of those elections, who oppose the peace process with the Kurds.⁹

III. Highlights of the March 2015 Package Laws

A. Enhanced Powers of Police to Conduct Searches

Turkish police have not been legally authorized since 2007 to conduct strip searches or searches of the trunk and interior of a vehicle without the approval of a judge or prosecutor. Under the amended Police Powers and Duties Law (Police Law), however, a police chief "assigned by the highest administrative chief, such as the provincial governor, will be able to order a strip search or a car search. Judges and prosecutors will be bypassed at this stage."¹⁰

⁷ Turkey: *Spy Agency Law Opens Door to Abuse*, *supra* note 6.

⁸ FREEDOM HOUSE, *supra* note 6; see also Heini Järvinen, *Internet Censorship and Surveillance in Turkey*, EDR1 (Mar. 12, 2014), <https://edri.org/internet-censorship-surveillance-turkey>, archived at <http://perma.cc/UTG2-36EN>; Turkey: *Internet Freedom, Rights in Sharp Decline*, HUMAN RIGHTS WATCH (Sept. 2, 2014), <https://www.hrw.org/news/2014/09/02/turkey-internet-freedom-rights-sharp-decline>, archived at <http://perma.cc/T765-V44K>.

⁹ Jonny Hogg & Gulsen Solaker, *Turkey Passes Tough New Security Law, Raising Fears of Election Crackdowns*, REUTERS (Mar. 27, 2015), <http://www.reuters.com/article/2015/03/27/us-turkey-parliament-security-idUSKBN0MN0WD20150327#SUtfO3Ujg5CFbBTX.97>, archived at <http://perma.cc/73LF-SUTP>; Caleb Lauer, *Turkey Security Bill Latest Fault Line Between Erdogan and Opponents*, WORLD POLITICS REVIEW (Mar. 3, 2015), <http://www.worldpoliticsreview.com/articles/15202/turkey-security-bill-latest-fault-line-between-erdogan-and-opponents>, archived at <http://perma.cc/4YLP-M74F>.

¹⁰ *Explained: Turkey's Controversial Security Bill*, HÜRRİYET DAILY NEWS (Feb. 21, 2015), <http://www.hurriyetdailynews.com/explained-turkeys-controversial-security-bill.aspx?pageID=238&nID=78658&NewsCatID=339>, archived at <http://perma.cc/4M43-77YP>; Polis Vazife ve Salâhiyet Kanunu [Police Powers and Duties Law], Law No. 2559, July 4, 1934, as amended, <http://www.mevzuat.gov.tr/MevzuatMetin/1.3.2559.pdf>, archived at <http://perma.cc/H77V-6L59>.

A verbal order for such searches can be made on a rush basis and subsequently confirmed in writing. The searches can be conducted when a “reasonable suspicion” (*yeterli şüphenin*) exists that there are weapons or other goods that constitute a threat in the vehicle, although the vehicle operator is not required to open nonvisible compartments. The law enforcement authority has twenty-four hours to submit a warrant for the search to a judge. The officer who conducts the vehicle search is to provide a document indicating the reason for the search.¹¹

The Police Law formerly stated that the police could take statements only at the police headquarters; under the amended Law, the police may take complainant, victim, or witness statements in the person’s workplace or place of residence.¹²

B. Police Use of Weapons

As amended, the Police Law now permits law enforcement to use weapons against persons who attack or attempt to attack the officers or others in “workplaces, dwellings, public buildings, schools, dormitories, houses of worship, vehicles or indoor or outdoor areas where there are individuals or people congregated in a group using Molotov cocktails, explosives, inflammables, incendiaries, suffocating devices, or injurious or similar” weapons, in order to neutralize the attack and to incapacitate persons to the extent necessary.¹³ Formerly, the Police Law limited situations in which the police could legally use firearms.¹⁴ One commentator stated that, with this ability to use force, police officers are now allowed “to shoot at protestors to prevent them from harming property without having to use less harmful measures first.”¹⁵

C. Extension of Permissible Warrantless Wiretapping Period to Forty-Eight Hours

Formerly, security personnel were permitted to carry out intelligence wiretapping in urgent situations for a twenty-four-hour period without a judge’s order. Law No. 6638 increases the permitted time limit under the Police Powers and Duties Law to forty-eight hours.¹⁶ The only authorities permitted to make a decision on continuance of the wiretapping are members of the Ankara criminal court (Ankara Court of Serious Crimes, Ankara ağır ceza mahkemesi), although the wiretapping officer must notify superiors of the action. Supervision of the wiretapping activities is carried out by an officer’s superiors, the civilian administrators, Police Headquarters (Turkish National Police), and relevant ministries, with inspections carried out at least once a year. These activities can be controlled by the Prime Ministry Inspection Board. The results of reports on wiretapping activities must be submitted to the Grand National Assembly’s Security

¹¹ Law No. 6638, art. 1 (amending Law No. 2559, art. 4A).

¹² Law No. 6638, art. 3 (amending Law No. 2559, art. 15); *Explained: Turkey’s Controversial Security Bill*, *supra* note 10.

¹³ Law No. 6638, art. 4 (amending Police Law art. 16 ¶ 7, adding a new subsection (d)) (translation by author).

¹⁴ *Explained: Turkey’s Controversial Security Bill*, *supra* note 10.

¹⁵ Michek, *supra* note 2.

¹⁶ *Explained: Turkey’s Controversial Security Bill*, *supra* note 10.

and Intelligence Committee.¹⁷ Law No. 6638 makes virtually the same amendments to the Gendarmerie Law, the only exception being the substitution of “Gendarmerie General Command” for “Police Headquarters.”¹⁸

Article 6 of the Law on State Intelligence Services and the National Intelligence Organization has a similar provision designating a member of the Ankara criminal court as the competent judicial authority to decide on wiretapping matters.¹⁹ This issue of the authorized judge for handling wiretapping actions was also addressed in a decision of the Supreme Board of Judges and Prosecutors, the body that appoints members of the judiciary, issued on May 26, 2015.²⁰

D. Detention Without a Warrant

The Turkish Criminal Procedure Code generally prescribes that a prosecutor’s permission is necessary in order to take a person caught in the act of committing a crime into custody for twenty-four hours.²¹ Law No. 6638 amends the Code to give the police the authority to detain persons caught in the act of committing a crime for twenty-four hours, without a warrant, for crimes involving force and violence committed during public events (*toplumsal olaylar*)—that is, for some ten types of offenses listed in the Criminal Code, crimes listed in the Anti-Terrorism Law, and certain offenses listed in the Meetings and Demonstration Act, among others.²² If the crime is “collective”—for example, involving mass demonstrations—police officers may hold persons in custody for up to forty-eight hours without a prosecutor’s permission.²³

E. Removal of Persons and Increased Penalties for Demonstrators

¹⁷ Law No. 6638, art. 5 (amending Law No. 2559, additional art. 7).

¹⁸ Law No. 6638, art. 6 (amending Jandarma Teşkilat, Görev ve Yetkileri Kanunu [Law on the Gendarmerie Organization, Duties and Authorities], Law No. 2803, additional art. 5, Mar. 10, 1983, *as amended*, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2803.pdf>, archived at <http://perma.cc/3U9Y-ZHBA>).

¹⁹ Devlet İstihbarat Hizmetleri ve Milli İstihbarat Teşkilatı Kanunu [Law on State Intelligence Services and the National Intelligence Organization], Law No. 2937, Nov. 1, 1983, *as amended*, available on the Milli İstihbarat Teşkilatı [National Intelligence Organization] website, at <https://www.mit.gov.tr/2937.pdf>, archived at <https://perma.cc/KEY4-DA42>.

²⁰ Hâkimler ve Savcılar Yüksek Kurulu Genel Kurul Kararı [Supreme Board of Judges and Prosecutors General Assembly Resolution], Resolution No. 886, May 26, 2015, RESMÎ GAZETE, No. 29368, May 27, 2015, <http://www.resmigazete.gov.tr/eskiler/2015/05/20150527-1.htm>, archived at <http://perma.cc/N8BP-KEGU>.

²¹ TURKISH CRIMINAL PROCEDURE CODE, CEZA MUHALEMESİ KANUNU arts. 90, 91 (Feridun Yenisey trans., Istanbul, Beta 2009), <http://www.legislationline.org/documents/id/17788>, archived at <http://perma.cc/J4QR-A9M8>; MUHALEMESİ KANUNU [CODE OF CRIMINAL PROCEDURE], Law No. 5271, Dec. 4, 2004, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5271.pdf>, archived at <http://perma.cc/W848-RFTE>.

²² Law No. 6638, art. 13 (amending CRIMINAL PROCEDURE CODE art. 9); Terörle Mücadele Kanunu [Anti-Terrorism Law], Law No. 3713, Apr. 12, 1991, *as last amended* Apr. 4, 2015, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.3713.pdf>, archived at <http://perma.cc/Q68K-XG8G>; Turkey: Counter Terrorism, LEGISLATIONLINE, <http://www.legislationline.org/topics/country/50/topic/5>, archived at <http://perma.cc/NDY8-A45M> (in English; last visited Sept. 17, 2015) (scroll down page to hyperlinked “Law on Fight Against Terrorism (1991, amended 2010)”).

²³ Law No. 6638, art. 13.

The Police Law formerly prescribed the categories of persons that security forces were legally authorized to “catch,” so that a prosecutor could then order the detention of those persons and the court could order their arrest.²⁴ Law No. 6638 amends the Police Law to allow officers to, “depending on the nature of the action or conditions, take under protection or remove,” not just catch and legally process, persons who violate the law in certain listed ways. It also adds to that list in subsection “H” the new broad category of those who “endanger the safety of others.”²⁵

Law No. 6638 adds fireworks, Molotov cocktails and similar handmade explosives, slingshots, and iron pellets to the list of items classified as arms under the Law on Meetings and Demonstrations.²⁶ The amendment increases prison sentences applicable under the Law on Meetings and Demonstrations to up to four years (from three) for persons who, while participating in demonstrations, use firearms or fireworks; Molotov cocktails or other handmade explosives; any kind of cutting or drilling tools; stones or sticks; iron or rubber rods; choke wires or chains; iron pellets and slingshots; bruising or asphyxiating tools; caustic, abrasive, or harmful chemicals; poisons; or any kind of smoke or gas; or who conceal their identities by fully or partially covering their faces. The minimum sentence for such offenses is two years and six months; previously it was six months.²⁷ A similar provision has been inserted into the Anti-Terrorism Law, which now provides for a sentence of three to five years’ imprisonment for persons who fully or partially conceal their faces to hide their identities at meetings and demonstrations of terrorist organizations held for propaganda purposes. For offenders who resort to force and violence or possess or use any kind of weapon, Molotov cocktails or explosives, or caustic or injurious substances, the penalty is a minimum of four years’ imprisonment upon conviction.²⁸

Another amendment to the Law on Meetings and Demonstrations provides for a prison term of from six months to three years for anyone who takes part in a demonstration “with the emblem, sign or uniform of an ‘illegal organization.’ ”²⁹ An additional article 1, on “recourse,” added to the Law on Meetings and Demonstrations, mandates compensation by the responsible individuals, not the government, for any damage to the property of natural or legal persons covered by the state that occurs during protests when violence causes serious deterioration in public order. The amendment also doubles the statute of limitations for claims relating to recourse under the Law on Meetings and Demonstrations.³⁰

²⁴ *Explained: Turkey’s Controversial Security Bill*, *supra* note 10.

²⁵ Law No. 6638, art. 2 (amending Law No. 2559, art. 13) (translation by author).

²⁶ Law No. 6638, art. 7 (amending Toplantı ve Gösteri Yürüyüşleri Kanunu [Law on Meetings and Demonstrations], Law No. 2911, Oct. 6, 1983, *as amended*, art. 23 ¶ 1(b), <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2911.pdf>, archived at <http://perma.cc/CMY4-JVEP>).

²⁷ Law No. 6638, art. 8 (amending Law No. 2911, art. 33 ¶ 1(a)).

²⁸ *Id.* art. 10; Terörle Mücadele Kanunu art. 7 ¶ 3.

²⁹ *Explained: Turkey’s Controversial Security Bill*, *supra* note 10; Law No. 6638, art. 8 (amending Law No. 2911, art. 33 ¶ 1(b)).

³⁰ Law No. 6638, art. 9.

Article 34 of Turkey's Constitution grants the right to demonstrate peacefully without prior permission, but the Law on Meetings and Demonstrations requires demonstrators to give notice of an event to administrative authorities, such as the governor's office, at least forty-eight hours beforehand. According to one commentator, this gives Turkish government officials time to declare the demonstration to be "unpermitted."³¹

According to a Turkish news report of August 5, 2015, further changes had been made to the Regulation on Implementation of the Law on Meetings and Demonstrations to impose more controls on demonstrators.³²

F. Closer Monitoring of Car Rental Identification Information

Law No. 6638 inserts an additional article 3 into the Identity Disclosure Law, making the operators and managers of car rental companies responsible for keeping daily records of vehicle rentals that include the lessee's identity and the rental contract information, and for keeping the documentation ready for review at any time by law enforcement officials. However, in the case of a vehicle hired by a public institution or organization, only the contract with the public authority or institution is recorded in the vehicle information system.³³ In addition, the use of false identity documents to rent a vehicle is made a punishable act under the Turkish Criminal Code. The failure of the lessor to maintain the required rental records may result in an administrative penalty of 5,000 Turkish Lira (TRY) (at the time of the Law's enactment, about US\$1,927); the destruction of information by the lessor to conceal a crime results in the cancellation of the lessor's operating license.³⁴

Law No. 6638 also adds a provisional article (*geçici madde*) 4 to the Identity Disclosure Law whereby car rental companies are obliged, within six months of the amending law's entry into force, to computerize all records and have their computer terminals connected to the computer terminals of law enforcement officials.³⁵ Additional article 1 of the Identity Disclosure Law had already provided for such a connection between "all kinds of private or public facilities" and law enforcement.³⁶

³¹ *Explained: Turkey's Controversial Security Bill*, *supra* note 10; TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY], Law No. 2709, Oct. 18, 1982, as last amended effective Mar. 29, 2011, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2709.pdf>, archived at <http://perma.cc/RL58-4MTY>; CONSTITUTION OF THE REPUBLIC OF TURKEY, as amended, https://global.tbmm.gov.tr/docs/constitution_en.pdf, archived at <http://perma.cc/LP6Y-UHWG>.

³² *Legal Changes Introduced to Limit Holding of Demonstrations*, TODAY'S ZAMAN (Aug. 5, 2015), http://www.todayszaman.com/national_legal-changes-introduced-to-limit-holding-of-demonstrations_395649.html, archived at <http://perma.cc/GH4U-UDRP>.

³³ Law No. 6638, art. 19 (inserting an additional art. 3 into Kimlik Bildirme Kanunu [Identity Disclosure Law], Law No. 1774, June 26, 1973, as last amended effective Apr. 4, 2015, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.1774.pdf>, archived at <http://perma.cc/6ZME-BT2G>).

³⁴ Law No. 6638, art. 19.

³⁵ *Id.* art. 20 (inserting provisional art. 4 into Law No. 1774).

³⁶ Law No. 1774, additional art. 1 (translation by author).

G. Enhanced Powers of Civil Servants

As noted above, under police search powers, governors, who are government-appointed, now have some of the powers held by prosecutors—for example, the power to authorize the police to find the perpetrators of crimes.³⁷ In addition, to ensure public order and the safety of people’s lives and property, governors and other officials have the authority to use all publicly-owned vehicles.³⁸ Any public servant who fails to comply with the governor’s orders can be imprisoned for a term of three months to one year.³⁹

H. Removal of Internet Content and Blocking of Internet

Article 29 of the other “package law,” Law No. 6639, inserts a new article 8A into the Law on Internet Media Regulation.⁴⁰ The amendment extends the scope of Internet controls by giving the Prime Minister and other relevant ministers the power to request that Internet content be removed and/or that access to a website be blocked, in cases where there is a judicial delay in obtaining a removal or blocking order and in matters involving the safety of life and property, prevention of crime, and protection of public health, or when national security and public order are considered to be at risk. Such decisions by the Prime Minister are to be reported immediately by the Telecommunications Directorate (Telekomünikasyon İletişim Başkanlığı, or TİB) to the access providers and to the relevant content and host providers. TİB is to remove the content or block the website within four hours after the decision is sent to the providers; the website will remain closed until the content has been removed.⁴¹

The Internet content removal or access-blocking order is to be submitted for approval within twenty-four hours by a criminal court judge, who must announce his decision within forty-eight hours or the order is automatically lifted.⁴²

According to the Law, only the part of the content (URL, etc.) where the infringement occurs can be blocked. However, a decision may be made to block access to the entire website in cases

³⁷ Law No. 6638, art. 15 (amending İl İdaresi Kanununun [Provincial Administration Law], Law No. 5442, June 10, 1949, *as amended*, art. 11, by adding new ¶ G, <http://www.mevzuat.gov.tr/MevzuatMetin/1.3.5442.pdf>, archived at <http://perma.cc/Q2BH-KH66>).

³⁸ Law No. 6638, art. 15 (amending Law No. 5442, art. 11, by adding new ¶ H).

³⁹ Law No. 6638, art. 16 (amending Law No. 5442, art. 66 ¶ 1, with additional sentence); *Explained: Turkey’s Controversial Security Bill*, *supra* note 10.

⁴⁰ İnternet Ortamında Yapılan Yayınların Düzenlenmesi ve Bu Yayınlar Yoluyla İşlenen Suçlarla Mücadele Edilmesi Hakkında Kanun [Law on Internet Media Regulation of Publications and on Combating Crimes Committed by Means of Such Publications] (Internet Law), Law No. 5651, May 4, 2007, *as last amended effective* Apr. 15, 2015, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5651.pdf>, archived at <http://perma.cc/BF8S-QFBD>.

⁴¹ Internet Law art. 8A(1); *New Law to Further Tighten Turkey’s Internet Control*, TODAY’S ZAMAN (Jan. 24, 2015), http://www.todayszaman.com/anasayfa_new-law-to-further-tighten-turkeys-internet-control_370721.html, archived at <http://perma.cc/A96Z-FK4D>; *Turkish PM, Ministers May Get Right to Block Internet with New Bill*, HÜRRIYET DAILY NEWS (Jan. 20, 2015), <http://www.hurriyetdailynews.com/turkish-pm-ministers-may-get-right-to-block-internet-with-new-bill.aspx?pageID=238&nID=77176&NewsCatID=338>, archived at <http://perma.cc/J2KB-FMAK>.

⁴² Internet Law art. 8A(2).

where it is technically not possible to block access only to the (allegedly) illegal content or where the infringement cannot be prevented by blocking access to the relevant content.⁴³

Where crimes are committed in connection with the provisions of article 8A, a criminal complaint may be lodged with the Office of the Chief Public Prosecutor. A judge may issue an order that Internet service providers provide judicial authorities with any information on content, location, and access necessary to apprehend the perpetrators.⁴⁴ Internet content, site, and access providers responsible for providing this information who have committed another serious crime in the course of providing such information are punishable by 3,000 to 10,000 days' imprisonment.⁴⁵ Both access providers and content and site providers who do not comply with a decision to remove content and/or block access are subject to an administrative penalty of TRY50,000 to 500,000 (at the time of enactment, about US\$18,694–\$186,940).⁴⁶

According to some commentators, banning access to an entire website under article 8A(3) “for any reason” constitutes a serious breach of freedom of speech and information because it results in banning access to “millions of contents [sic] millions of users share and it is clearly against the Constitutional Court’s recent decisions” (issued in 2014).⁴⁷ Those decisions concerned the unconstitutionality of an access ban on an entire Twitter website (Constitutional Court Application No. 2014/3986, Apr. 2, 2014) and on an entire video-sharing platform with countless URLs (Constitutional Court Application No. 2014/4705, May 29, 2014); both bans were found to violate article 26 of the Turkish Constitution on freedom of expression.⁴⁸ In addition, on October 2, 2014, the Court ruled that the conditions set forth in an amendment to Law 5651 approved the previous month, which gave TİB the power to block websites “for national security, the restoration of public order, and the prevention of crimes,” were not valid grounds for TİB’s blocking authority.⁴⁹

I. New Privacy Article in Electronic Communications Law

Article 32 of Law No. 6639 amends article 51 of the Electronic Communications Law on the processing of personal data and privacy protection, an article that had been revoked by the Constitutional Court. Among the article’s thirteen provisions is the general prescription that

⁴³ *Id.* art. 8A(3); Gönenç Gürkaynak, İlay Yılmaz & Nazli Pinar Taşkiran, *Turkey: Another Patchwork Amendment to Turkish Internet Law*, MONDAQ, <http://www.mondaq.com/turkey/x/375042/IT+internet/Another+Patchwork+Amendment+To+Turkish+Internet+Law> (last updated Feb. 17, 2015), archived at <http://perma.cc/RN55-TBTG>. The draft version of the text referred to in the article is virtually the same as the final adopted version.

⁴⁴ Internet Law art. 8A(4).

⁴⁵ *Id.*

⁴⁶ *Id.* art. 8A(5).

⁴⁷ Gürkaynak, Yılmaz & Taşkiran, *supra* note 43.

⁴⁸ *Id.*

⁴⁹ FREEDOM HOUSE, *supra* note 6 (scroll down to section on “Legal Environment”); Zeynep Oya Usal, *Turkey: Constitutional Court Overturns Recent Amendments to the Internet Act*, IRIS MERLIN, IRIS 2015-1:1/37, <http://merlin.obs.coe.int/article.php?id=15085>, archived at <http://perma.cc/8AX3-NQ98>.

network operators are to take appropriate technical and organizational measures to ensure the security of the services they offer and of subscribers and users' personal data.⁵⁰

J. Covert Operations Funding

Law No. 6639 amends article 24 of the Public Finance Management and Control Law on funding covert operations.⁵¹ The Public Finance Management and Control Law “oversees the allocation of the discretionary fund normally allocated for the use of the prime minister to finance covert operations in which the state may not be directly involved.”⁵² Law No. 6639 expands the scope of the discretionary fund’s use to include not only government but state requirements, making the fund available for use by the president in addition to the prime minister. A fourth paragraph added to article 24 of the Law provides that matters covered in the budgetary appropriations for funding covert operations are to be determined and implemented by presidential decree.⁵³

K. Reform of the Gendarmerie

Law No. 6638 provides for the transfer of control over Turkey’s gendarmerie from the Turkish Armed Forces to the Ministry of the Interior. The gendarmerie has the responsibility of maintaining public order in remote areas beyond the jurisdiction of the Turkish national police. According to one news report, the reform of the gendarmerie

is considered a significant milestone for Turkey’s demilitarization process. . . . The demilitarization of the gendarmerie forces will mean that the institution will work as two separate forces completely integrated with the governorships of provinces. It is predicted that the gendarmerie forces responsible for domestic security will turn into professional local forces while the other unit will be responsible for ensuring security along the border and at customs gates. Through this reform, the government aims to end tutelage by the military and provide a more democratic approach by government institutions.⁵⁴

⁵⁰ Law No. 6639, art. 32 (amending Elektronik Haberleşme Kanunu [Electronic Communications Law], Law No. 5809, Nov. 5, 2008, *as last amended effective* May 1, 2015, art. 51(4), <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5809.pdf>, English translation available at <http://www.trabis.gov.tr/en/5809english.html>, archived at <http://perma.cc/P2F5-66LL>.

⁵¹ Law No. 6639, art. 39 (amending Kamu Malî Yönetimi ve Kontrol Kanunu [Public Financial Management and Control Law], Law No. 5018, Dec. 10, 2003, *as amended*, art. 24, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5018.pdf>, archived at <http://perma.cc/8WA5-DNVT>, English translation including amendments through Apr. 26, 2011, available at <http://internationalbudget.org/wp-content/uploads/Turkey-PublicFinancialManagementandControlLaw2003-English.pdf>, archived at <http://perma.cc/L8WG-E2L9>).

⁵² Arif Tekdal, *Last-Minute Proposal to Grant Use of Secret Fund to Presidency Passed in Parliament*, TODAY’S ZAMAN (Mar. 27, 2015), http://www.todayszaman.com/anasayfa_last-minute-proposal-to-grant-use-of-secret-fund-to-presidency-passed-in-parliament_376465.html, archived at <http://perma.cc/2AE2-T35T>.

⁵³ Law No. 6639, art. 24; Tekdal, *supra* note 52.

⁵⁴ Ali Ünal, *Turkey Ends Tutelage by Military with Gendarmerie Reform*, DAILY SABAH (Mar. 10, 2015), <http://www.dailysabah.com/legislation/2015/03/10/turkey-ends-tutelage-by-military-with-gendarmerie-reform>, archived at <http://perma.cc/5EFL-XLRH>.

IV. Concluding Comments

In its 2015 report on press freedom around the world, covering 2014 developments, the “independent watchdog organization” Freedom House states that “[c]onditions for media freedom in Turkey continued to deteriorate in 2014 after several years of decline.”⁵⁵ The report points out that new laws enacted in Turkey in 2014 “expanded both the state’s power to block websites and the surveillance capability” of MİT, that “[j]ournalists faced unprecedented legal obstacles as the courts restricted reporting on corruption and national security issues,” and that in cracking down on journalists and media organizations the government “also continued to aggressively use the penal code, criminal defamation laws, and the antiterrorism law.”⁵⁶

In June 2015, Christophe Regnard, the President of the European Association of Judges (EAJ), in responding to questions posed to him, contended that “[t]he rule of law has decreased in the past few years in Turkey, the most serious manifestation of which is the arrest of two judges,” Metin Özcelik and Mustafa Baser.⁵⁷ An EAJ press release issued on May 29 demanded the judges’ immediate release; the two “were arrested in İstanbul on April 30, 2015, after having ordered the release from pre-trial detention of police officers and journalists.”⁵⁸ Regnard also criticized the use of the criminal offense of “insulting the president of the state” in the Turkish Penal Code against journalists and media representatives, “who differed in their view from the president and the leading political party.”⁵⁹

⁵⁵ *About Us*, FREEDOM HOUSE, <https://freedomhouse.org/about-us> (last visited Sept. 29, 2015); *Turkey: 5-Year Decline in Press Freedom*, in FREEDOM HOUSE, FREEDOM OF THE PRESS 2015, <https://freedomhouse.org/report/freedom-press/2015/turkey>, archived at <http://perma.cc/6GP9-P95B>.

⁵⁶ *Id.*

⁵⁷ *Head of European Assn of Judges: Rule of Law Has Decreased in Turkey*, TODAY’S ZAMAN (June 26, 2015), http://www.todayszaman.com/anasayfa_head-of-european-assn-of-judges-rule-of-law-has-decreased-in-turkey_392045.html, archived at <http://perma.cc/2PK5-83YU>.

⁵⁸ *Id.*

⁵⁹ *Id.*